

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MARILYN MARIE SMITH,	:	CIVIL ACTION NO. 1:18-CV-24
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
COUNCIL 13 AFSCME,	:	
	:	
Defendant	:	

ORDER

AND NOW, this 18th day of April, 2018, upon consideration of the report (Doc. 10) of Magistrate Judge Joseph F. Saporito, Jr., issued following review of the complaint (Doc. 1) filed by *pro se* plaintiff Marilyn Marie Smith (“Smith”) pursuant to 28 U.S.C. § 1915(e)(2)(B), wherein Judge Saporito recommends that the court dismiss Smith’s complaint (Doc. 1) for failure to plead exhaustion of administrative remedies—specifically, failure to establish the jurisdictional prerequisites of prior submission of her claim to either the Equal Employment Opportunity Commission or Pennsylvania Human Relations Commission and receipt of a right to sue letter therefrom—but also recommends that dismissal be with leave for Smith to submit an amended pleading properly articulating the jurisdictional prerequisites to suit, and the court noting that Smith filed an objection (Doc. 11) to the report, which purports to assert new and varied claims and to which Smith appends certain correspondence indicating that she may have submitted an unspecified claim to a state agency sometime in 2004 or 2006, (see id. at 5-6), and following *de novo* review of the contested portions of the report, see Behar v. Pa. Dep’t of Transp., 791 F.

Supp. 2d 383, 389 (M.D. Pa. 2011) (citing Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(C)), and applying a clear error standard of review to the uncontested portions, see Cruz v. Chater, 990 F. Supp. 375, 376-78 (M.D. Pa. 1999), the court being in full agreement with Judge Saporito's rationale, and finding same to be thorough, well-reasoned, and fully supported by the record, and finding Smith's objection to be without merit and her appended exhibits insufficient to comply with the requirements articulated in Judge Saporito's report, it is hereby ORDERED that:

1. The report (Doc. 10) of Magistrate Judge Saporito is ADOPTED.
2. Smith's complaint (Doc. 1) is DISMISSED without prejudice.
3. Smith is granted leave to amend her pleading within twenty (20) days of the date of this order.
4. Any amended pleading filed pursuant to paragraph 3 shall be filed to the same docket number as the instant action, shall be entitled "First Amended Complaint," and shall be complete in all respects. It shall be a new pleading which stands by itself as an adequate complaint under the Federal Rules of Civil Procedure, without reference to the complaint (Doc. 1) hereinabove dismissed.
5. In the absence of a timely-filed amended complaint, the Clerk of Court shall close the above-captioned action.
6. Any appeal from this order is deemed to be frivolous and not taken in good faith. See 28 U.S.C. § 1915(a)(3).

/S/ CHRISTOPHER C. CONNER

Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania